

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRANDON EUGENE HUNTER,

Plaintiff,

v.

BUNGAY, et al.,

Defendants.

No. 2:22-cv-2048 CKD P

ORDER

Plaintiff is a Sacramento County Jail prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 The court is required to screen complaints brought by prisoners seeking relief against a
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
3 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
4 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

6 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
7 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
8 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
9 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
10 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
11 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
12 Cir. 1989); Franklin, 745 F.2d at 1227.

13 In order to avoid dismissal for failure to state a claim a complaint must contain more than
14 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
15 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
16 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
17 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
18 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
19 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
20 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.
21 at 678. When considering whether a complaint states a claim upon which relief can be granted,
22 the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and
23 construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
24 U.S. 232, 236 (1974).

25 The court has reviewed plaintiff’s complaint and finds that it fails to state a claim upon
26 which relief can be granted under federal law. Plaintiff’s complaint must be dismissed. The
27 court will, however, grant leave to file an amended complaint.

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1 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
2 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v.
3 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, in his amended complaint, plaintiff must allege in
4 specific terms how each named defendant is involved. There can be no liability under 42 U.S.C.
5 § 1983 unless there is some affirmative link or connection between a defendant's actions and the
6 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory
7 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
8 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

9 Plaintiff alleges he has been subjected to harmful conditions of confinement. Plaintiff is
10 informed that Under the Eighth Amendment, "prison officials have a duty to protect prisoners
11 from violence at the hands of other prisoners." Farmer v. Brennan, 511 U.S. 825, 833 (1994)
12 (internal quotation marks, ellipsis, and citation omitted). However, "not . . . every injury suffered
13 by one prisoner at the hands of another . . . translates into constitutional liability for prison
14 officials responsible for the victim's safety." Id. at 834. A prison official may be held liable for
15 an assault suffered by one inmate at the hands of another only where the assaulted inmate can
16 show that the injury is sufficiently serious, and that the prison official was deliberately indifferent
17 to the risk of harm. Id. at 834, 837. Thus, the relevant inquiry is whether prison officials, "acting
18 with deliberate indifference, exposed a prisoner to a sufficiently substantial risk of serious
19 damage to his future health." Id. at 834 (internal quotation omitted). To be deliberately
20 indifferent, the "official must both be aware of facts from which the inference could be drawn that
21 a substantial risk of serious harm exists, and he must also draw the inference." Id.

22 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to
23 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
24 complaint be complete in itself without reference to any prior pleading. This is because, as a
25 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
26 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
27 longer serves any function in the case. Therefore, in an amended complaint, as in an original
28 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.

3 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
4 shall be collected and paid in accordance with this court's order to the Sheriff of Sacramento
5 County filed concurrently herewith.

6 3. Plaintiff's complaint is dismissed.

7 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
8 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
9 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
10 number assigned this case and must be labeled "Amended Complaint." Failure to file an
11 amended complaint in accordance with this order will result in a recommendation that this action
12 be dismissed.

13 Dated: March 3, 2023



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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